HIGH COURT OF UTTARANCHAL, AT NAINITAL
Criminal Misc. Application No.82 of 2001
Old No. 850 of 1994

1. M/s Padam Sen Sandeep Kumar
   Kosi Road, Ram Nagar
   District Nainital thorough
   Sri Padam Sen Proprietor
2. Sri Padam Sen Proprietor
   Sandeep Kumar
   Kosi Road, Ram Nagar
   Nainital ….. Applicants

Versus

1. State of Uttaranchal
2. The Chief Judicial Magistrate
   Chamoli
3. The Food Inspector
   Yatra Marg, Joshimath
   District Chamoli …..
   Respondents

AND

Criminal Misc. Application No.83 of 2001

1. M/s Padam Sen Sandeep Kumar
   Kosi Road, Ram Nagar
   District Nainital thorough
   Sri Padam Sen Proprietor
2. Sri Padam Sen Proprietor
   Sandeep Kumar
   Kosi Road, Ram Nagar
   Nainital ….. Applicants

Versus

1. State of Uttaranchal
2. The Chief Judicial Magistrate
   Chamoli
3. The Food Inspector
   Yatra Marg, Joshimath
   District Chamoli …..
   Respondents

Sri Sudhir Kumar learned counsel for the applicants.
Sri Lalit Verma and Sri Rajeev Mohan learned A.G.A. for the State

Hon'ble J.C.S. Rawat, J.

1. Since there is a common question of law involved in both the petitions, therefore, both aforesaid cases

have been heard together and are being disposed of by the single judgment.

2. Criminal Misc. Application Nos.82/2001 & 83/2001 have been filed for quashing the proceedings in criminal case No.70/1992 & 69/1992 respectively under section 7/16 of the Prevention of Food Adulteration Act pending before the Chief Judicial Magistrate, Chamoli.

3. Brief facts of the case are that on 17.11.1991 the Food Inspector took the sample of Dal Channa & Dal Arhar from the Truck No.MKH 7756 after taking necessary formalities. Then, the Food Inspector sent the sample of Dal Arhar to the Public Analyst for examination. The Public Analyst reported that there was a mixture of 5% of Dal Khesari which is a banned item for being used as a food material. After the receipt of this report, the Chief Medical Officer, Chamoli granted sanction for prosecution under section 7/16 of the Act. Thereafter, the complaints were filed by the Prevention of Food Inspector against Ram Kumar on 03.07.1992. In the meantime, on 3.7.1992 an application was filed that the name of the accused person was wrongly informed by the accused at the time of taking sample. It was further stated in the said application that the sample was taken from Padam Sen, who fraudulently stated his name as “Ram Kumar”. It was further stated that Padem Sen may be impleaded as accused in the said prosecutions. The C.J.M. after going through the complaints and the application took cognizance against the present applicants. Feeling aggrieved by this, the present petitions have been filed.

4. It was contended on behalf of the applicants that the entire proceedings had been based only on the report of the Food Inspector. It was contended that the learned Magistrate had not taken any evidence as has

been provided under section 20-A of the Prevention of Food Adulteration Act. It was contended that the entire proceedings against the present applicants are liable to be quashed. Learned AGA could not support the order against the present applicants in view of the provisions of section 20-A P.F.A. Act. Perusal of section 20A of the Act reveals that it is essential pre-requisite that there must be evidence disclosing the commission of any offence by a person other than the accused so that he could be tried together with the original accused. Only in such a case, section 319 Cr.P.C. can be involved. A report from the Food Inspector cannot be construed as evidence to invoke section 319 Cr.P.C. If the Food Inspector had given evidence before making the application to implead the applicants as the accused, then position would have been different. Since the report filed by the Food Inspector is not the evidence, hence the trial court erred in impleading the applicants as the accused. Moreover, the applicants who were impleaded subsequently as the accused could not be tried together with the former. There was hardly any material for the trial court to invoke section 319 Cr.P.C./20-A P.F.A. Act and to proceed against the applicants. Powers under section 20A cannot be exercised before the commencement of trial because it is only on the basis of evidence produced that the Magistrate can act under this section. Obviously, section 20A could not have been invoked to implead the applicants as the sole accused. The report of the Food Inspector did not disclose as to how he came to know that the accused-Padam Sen had wrongly named himself as “Ram Kumar”. The report further says that it is reliably learnt that the accused had wrongly mentioned his name. The complaint was filed by the Food

Inspector on 3.2.1992 against the accused-Ram Kumar and the sanction for prosecution was obtained three days ago and he filed the report simultaneously with the complaint to implead the applicants as accused in the said case. If this fact has come to his notice he could have investigated the matter and he could have obtained the sanction against Padam Sen and he could have filed the complaint against the applicants. Obviously, section 20A could not have been invoked to implead the applicants as the sole accused.

5. In view of the above, the cognizance order against the present applicants was erroneous. Therefore, the summoning order passed by the Chief Judicial Magistrate, Chamoli in case No.69/1992 & 70/1992 under section 7/16 of the Prevention of Food Adulteration Act are set aside. Both the petitions are allowed.

6. All the pending miscellaneous application(s) in this case, if any, shall stand disposed of accordingly.

(J. C. S. Rawat, J.)

Dated 15.06.2006

LSR